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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,695	11/25/2003	Marty Kessler	Kessler 426-7	3046
23294	7590	04/01/2005	EXAMINER	
JONES, TULLAR & COOPER, P.C. P.O. BOX 2266 EADS STATION ARLINGTON, VA 22202			GUTMAN, HILARY L	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/720,695

Applicant(s)

KESSLER, MARTY

Examiner

Hilary Gutman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 7-12 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings were received on 2/28/05. These drawings are acknowledged by the examiner.

Claim Objections

3. Claims 3, 10, and 16 are objected to because of the following informalities:

In claim 3, line 2, perhaps "said" should be inserted before "one of".

In claim 10, line 2, the square after "90" should be modified.

In claim 16, line 1, perhaps "said" should be inserted before "fingers".

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6, 13, and 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Schoeller.

Schoeller (5,411,234) discloses a rotatable finger assembly for use in spacing, separating or supporting one or more articles comprising: a plurality of independently rotatable fingers 6

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mounted for rotation about a common axis. Specifically, Figure 1 shows a finger 6 on a frontmost column 1 and additionally shows how a finger 6 on a rearmost column rotates coaxially with the finger on the frontmost column. Each said finger 6 is rotatable between a first position wherein a surface of the finger is engageable with a surface of one of said articles (Figure 4) and a second position wherein said surface of the finger is pivoted away from said surface of said one of said articles.

With regard to claim 2, each said finger 6 has a second (or bottom) surface engageable with a surface of an adjacent article and wherein when said finger is rotated to said second position, said second surface is pivoted away from said surface of said adjacent article (Fig. 6).

With regard to claim 3, said surface of said finger has a profile which conforms substantially to the profile of said surface of one of said articles.

With regard to claim 4, said first position of each finger is angularly the same as every other said finger.

With regard to claim 5, stop means (such as the protrusions, grooves, and the shape of the finger itself) are provided for limiting rotation of each finger between said first and second positions.

With regard to claim 6, said fingers 6 are mounted about said common axis on a finger mount 1 having a central aperture (seen in cross section in Figure 5) through which a central shaft (not numbered) is disposed.

With regard to claim 13, all said fingers have the same shape.

With regard to claim 15, adjacent fingers are shaped to accommodate a portion of one of said articles therebetween when said fingers are in said first position.

With regard to claim 16, two or more fingers are joined to provide a supporting surface for one or more of said articles.

With regard to claim 17, a transportation or shipping package comprising one or more pairs of rotatable finger assemblies as claimed in claim 16 used for spacing, separating or supporting said one or more articles contained therein, said pair being disposed on opposite inner walls of said package.

With regard to claim 18, a transportation or shipping package comprising at least one rotatable finger assembly as claimed in claim 1 used for spacing, separating or supporting said one or more articles contained therein.

With regard to claim 19, said at least one rotatable finger assembly can apparently be positioned horizontally along an inner vertical wall of said transportation or shipping package.

6. Claims 1-6 & 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker.

Walker (5,217,121) discloses a rotatable finger assembly for use in spacing, separating or supporting one or more articles 5 comprising: a plurality of independently rotatable fingers 12 mounted for rotation about a common axis. Figure 1 shows a finger 12 on one rail 4 and additionally shows a finger 12 on an opposite side rail 4 which rotates co-axially with the finger on the one rail 4. Each said finger being rotatable between a first position wherein a surface of the finger is engageable with a surface of one of said articles and a second position wherein said surface of the finger is pivoted away from said surface of said one of said articles.

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With regard to claim 2, each said finger has a second surface engageable with a surface of an adjacent article and wherein when said finger is rotated to said second position, said second surface is pivoted away from said surface of said adjacent article.

With regard to claim 3, said surface of said finger has a profile which conforms substantially to the profile of said surface of one of said articles.

With regard to claim 4, said first position of each finger is angularly the same as every other said finger.

With regard to claim 5, stop means (such as pins) are provided for limiting rotation of each finger between said first and second positions.

With regard to claim 6, said fingers are mounted about said common axis on a finger mount having a central aperture through which a central shaft is disposed.

With regard to claim 12, further comprising a spacer 20 positioned between one or more adjacent pairs of finger mounts.

With regard to claim 13, all said fingers have the same shape.

With regard to claim 14, one or more of said fingers each has a slot for engaging an edge of one of said articles.

With regard to claim 15, adjacent fingers are shaped to accommodate a portion of one of said articles therebetween when said fingers are in said first position.

With regard to claim 16, two or more fingers are joined to provide a supporting surface for one or more of said articles.

With regard to claim 17, a transportation or shipping package comprising one or more pairs of rotatable finger assemblies as claimed in claim 16 used for spacing, separating or

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supporting said one or more articles contained therein, said pair being disposed on opposite inner walls of said package.

With regard to claim 18, a transportation or shipping package comprising at least one rotatable finger assembly as claimed in claim 1 used for spacing, separating or supporting said one or more articles contained therein.

Allowable Subject Matter

7. The indicated allowability of claims 3, 6, and 14-17 is withdrawn in view of the newly discovered reference(s) to Schoeller and Walker. Rejections based on the newly cited reference(s) follow.

8. Claims 7-12 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

13. Any response to this final action should be mailed to:

Box AF

Assistant Commissioner for Patents


Washington, D.C. 20231

or faxed to:

(703) 872-9327, (for formal communications; please mark "EXPEDITED
PROCEDURE")

or:

(703) 746-3515, (for informal or draft communications, please clearly label
"PROPOSED" or "DRAFT").


Hilary Gutman
March 22, 2005